

The Honorable David G. Estudillo

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

MAVERICK GAMING LLC.

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

NO. 3:22-cv-05325-DGE

STATE DEFENDANTS' JOINDER
IN SHOALWATER BAY TRIBE'S
MOTION FOR RELIEF FROM
SUMMARY JUDGMENT
DEADLINES

NOTED ON MOTION CALENDAR:
August 12, 2022

I. INTRODUCTION

The State Defendants join the Shoalwater Bay Tribe's Motion for Relief from Summary Judgment Deadlines (Dkt. #69), which seeks to suspend briefing on the merits pending the resolution of the Tribe's Fed. R. Civ. P. 12(b)(7)/Fed. R. Civ. P. 19 (Rule 19) motion to dismiss (and its related motion for limited intervention) (Dkt. #68). The Rule 19 motion presents a threshold question—"whether an action could fairly proceed" in the Tribe's absence—that must be resolved before reaching the merits. *Dine Citizens Against Ruining Our Env't v. Bureau of Indian Affs.*, 932 F.3d 843, 857 (9th Cir. 2019). The requested suspension of deadlines would conserve the parties' and the Court's resources without prejudicing any party. There is no good reason to proceed with potentially-futile briefing on the merits when the Rule 19 motion may dispose of the entire case.

II. BACKGROUND

On May 9, 2022, this case was transferred from the U.S. District Court for the District of Columbia. Dkt. #48. On June 28, 2022, the Court granted the parties' stipulated motion for a briefing schedule on cross-dispositive motions, which the parties anticipated would resolve the case on its merits without the need for factual discovery. Dkt. #63. Under that stipulated briefing schedule, Plaintiff Maverick Gaming LLC's dispositive motion is currently due on August 12, 2022; Defendants' combined cross-dispositive motions and responses are due on September 12, 2022; and all briefing on those motions would be completed by November 2, 2022. *Id.* at 2–3.

On August 3, 2022, the Shoalwater Bay Tribe moved to intervene for the limited purpose of moving to dismiss this case under Rule 19, on the grounds that the Tribe is a necessary and indispensable party and cannot be joined due to its sovereign immunity. Dkt. #68. If granted, the Tribe's Rule 19 motion would dispose of this case in its entirety. *See id.* The Tribe also asks the Court to postpone the current summary judgment briefing deadlines pending the resolution of its Rule 19 motion. Dkt. #69. In light of these developments, the State Defendants agree that a postponement of the summary judgment deadlines is warranted.

III. ARGUMENT

Under Fed. R. Civ. P. 6(b)(1), the Court may extend deadlines “for good cause,” and Fed. R. Civ. P. 16(b)(4) likewise provides that a scheduling order may be modified “for good cause and with the judge’s consent.” Where, as here, a motion for relief from a deadline is filed before such deadline has passed, no further showing is required. *See* Fed. R. Civ. P. 6(b)(1). And the “good cause” standard is easily satisfied. There is no good reason to proceed with potentially-futile briefing on the merits when the Tribe's Rule 19 motion may dispose of the entire case.

Whether a party is indispensable under Rule 19, such that the action cannot proceed without its participation, is a threshold question that must be resolved before the Court reaches the merits. *See* Fed. R. Civ. P. 19(b) (court must determine whether “the action should proceed”);

1 *Dine Citizens*, 932 F.3d at 861 (affirming dismissal of action under Rule 19 where Indian Tribe
 2 was a required party to an action, but not joinable because of sovereign immunity). Even if the
 3 case is not dismissed in full, the Tribe's Rule 19 motion may clarify or narrow the issues before
 4 the Court, and may circumscribe the relief that Maverick may seek in the Tribe's absence. *Cf.*
 5 *Makah Indian Tribe v. Verity*, 910 F.2d 555, 561 (9th Cir. 1990) (holding that absent Tribes were
 6 necessary and indispensable parties as to retroactive claims but not as to prospective procedural
 7 claims). Courts in this district have postponed proceedings in similar circumstances, to allow for
 8 resolution of a potentially dispositive issue. *See, e.g., Rabang v. Kelly*, No. C17-0088-JCC,
 9 2017 WL 4811538, at *4 (W.D. Wash. Oct. 25, 2017) (staying case, including motion for
 10 summary judgment, where pending tribal election could affect court's jurisdiction);
 11 *Volcan Grp., Inc. v. T-Mobile USA, Inc.*, No. C10-711 RSM, 2011 WL 6141000, at *4
 12 (W.D. Wash. Dec. 9, 2011) (staying all proceedings other than those related to a potentially
 13 dispositive spoliation motion).

14 Postponing the summary judgment deadlines will not prejudice Maverick. Even if
 15 briefing on the merits of Maverick's claims were to proceed concurrently with briefing on the
 16 Tribe's Rule 19 motion, the Court would still have to consider and decide the threshold Rule 19
 17 question first. Moreover, the parties have achieved considerable efficiency by agreeing to resolve
 18 this case on the papers, without taking factual discovery or trying issues of fact—which more
 19 than makes up for any delay caused by temporarily suspending the summary judgment briefing
 20 deadlines. The harm caused by adhering to the current schedule, on the other hand, is
 21 appreciable: now that a Rule 19 motion is pending and may dispose of the entire case, proceeding
 22 with briefing on the merits would be wasteful and unnecessary for both the parties¹ and the Court.

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 26 ¹ Even if Maverick elects to file its initial dispositive motion by August 12, 2022, there is still good cause to postpone the remainder of the dispositive motions briefing schedule.

Though the State Defendants previously stipulated to the current summary judgment deadlines, the Rule 19 motion is a game-changer. In light of this development, the Tribe's requested change to the case schedule is a sensible approach.

IV. CONCLUSION

The State Defendants ask the Court to grant the Shoalwater Bay Tribe’s Motion for Relief from Summary Judgment Deadlines.

DATED this 10th day of August 2022.

ROBERT W. FERGUSON
Attorney General of Washington

s/ Kristin Beneski

KRISTIN BENESKI, WSBA No. 45478
First Assistant Attorney General
BRIAN H. ROWE, WSBA No. 56817
WILLIAM MCGINTY, WSBA No. 41868
Assistant Attorneys General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744
kristin.beneski@atg.wa.gov
brian.rowe@atg.wa.gov
william.mcginity@atg.wa.gov

TERA HEINTZ, WSBA No. 54921
Deputy Solicitor General
1125 Washington Street SE
Olympia, WA 98504-0100
(360) 753-6200
tera.heintz@atg.wa.gov

Attorneys for State Defendants

DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will serve a copy of this document upon all counsel of record.

Theodore B. Olson, DCBA No. 367456
 Matthew D. McGill, DCBA No. 481430
 Lochlan F. Shelfer, DCBA No. 1029799
 Gibson, Dunn & Crutcher LLP
 1050 Connecticut Avenue, N.W.
 Washington, D.C. 20036
 (202) 955 – 8668
 tolson@gibsondunn.com
 mmcgrill@gibsondunn.com
 lshelfer@gibsondunn.com

Thomas M. Brennan, WSBA No. 30662
 Brennan Legal, PLLC
 P.O. Box 1384
 144 Railroad Ave S., Suite 308
 Edmonds, WA 98020
 (425) 967-3550
 tom@brennanlegalpllc.com

Daron T. Carreiro, DCBA No. 983088
 Rebecca M. Ross, AZBA No. 028041
 United States Department of Justice
 Environment and Natural Resources Division
 P.O. Box 7611
 Ben Franklin Station
 Washington, D.C. 20044-7611
 (202) 305-1117
 daron.carreiro@usdoj.gov
 rebecca.ross@usdoj.gov

DATED this 10th day of August 2022, at Seattle, Washington.

s/ Brian H. Rowe

BRIAN H. ROWE, WSBA No. 56817
 Assistant Attorney General